UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

H-W TECHNOLOGY, L.C.,	)	
	)	**CIVIL ACTION NO. 3:11-cv-00651-G-BH**
Plaintiff,	)	
	)	
v.	)	
	)	
APPLE INC., ET AL.,	)	**JURY TRIAL DEMANDED**
	)	
Defendants.	)	
	)	
	)	
	)	
	)	

DEFENDANTS' RENEWED MOTION TO DISMISS UNDER FRCP 12(B)(6) FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

Defendants Google Inc., HTC Corporation, HTC America, Inc., Buy.com, Inc., Amazon.com, Inc., Amazon Payments, Inc., Motorola Mobility LLC, Samsung Electronics Co., Ltd., Samsung Electronics America, Inc. and Samsung Telecommunications America LLC renew their prior Motion to Dismiss Under Fed. R. Civ. P. 12(b)(6) (Dkt. 195) that the asserted claims of U.S. Patent No. 7,525,955 are invalid because (1) Claims 1 and 17 each combine two separate statutory classes of invention within a single claim, and (2) Plaintiff H-W Technology L.C.'s ("H-W") Complaint fails to state a claim for infringement of method Claim 9, which requires the actions of more than one party to perform the claimed method steps.

On March 9, 2012, the Court adopted the Magistrate Judge's recommendation that the Court deny Defendants' original motion to dismiss as premature because "the record [was] not adequately developed at [that] specific junction for a proper claim construction." (Dkt. 316; Dkt. 329). Claim construction briefing is now complete. Based on this further developed record, the issues presented in Defendants' Motion to Dismiss are now ripe for judgment by this Court. Indeed, this further developed record illustrates that no issue of claim construction bears on this motion.

Specifically, with respect to Claims 1 and 17, the Court found that a holding of invalidity would be premature because "the parties have not yet had the opportunity to propose their claim construction definitions, formally identify which terms are in dispute, or submit their claim construction briefs." Recommendation at 6. The Court found claim construction necessary to the process as "the parties vigorously dispute whether the claim language at issue covers more than one subject-matter class." *Id.* In its claim construction briefing, however, H-W made no argument concerning the subject-matter class covered by the identified claim language. (*See* Dkt. 360 and Dkt. 368). Further, H-W indicated in its Misc. Order No. 62, ¶ 4-1 Statement that the Court should adopt the plain and ordinary meaning of all remaining terms. Accordingly, to the extent there is a question relating to claim construction, H-W agrees plain and ordinary meaning applies. Further, none of the constructions advocated by Defendants has any impact on this motion. As no new information was raised in claim construction, whether Claims 1 and 17 are indefinite and invalid under 35 U.S.C. § 112, ¶ 2 for combining two statutory classes of invention within a single claim may be decided based upon the arguments previously submitted, no additional briefing is required, and no action on claim construction is required by the Court to decide this issue.

In addition, with respect to Claim 9, the Court found the parties had a fundamental dispute as to whether the language in the second and sixth steps of Claim 9 could be fulfilled by a single entity. *See* Recommendation at 11. This dispute focuses on the proper construction of "user," which was fully briefed by the parties in their claim construction briefing. H-W proposes construing "user" as "a person or thing that uses an IP phone," whereas Defendants propose construing "user" as "a consumer operating the IP Phone." The fundamental difference is whether a "user" may be something other than a human. H-W's position is that "user" should be given its ordinary meaning, which H-W asserts is "a person or thing that uses." H-W Op. Br. at 13-15. H-W points to the testimony of the inventor as saying that either the phone or the server may send an offer to the merchant. *Id.* at 17. Defendants rely upon the language of the claims (requiring the user of an IP phone and said user to select an offer and to have payment

information), the specification (stating the user is the consumer), and inventor testimony. Defendants Op. Br. at 6-9. Accordingly, the record is adequately developed, and this issue may be decided concurrently with claim construction without additional briefing.

CONCLUSION

For the foregoing reasons, Defendants respectfully renew their prior motion to dismiss and incorporate by reference their prior briefing on the subject, Dkt. 195, Dkt. 232, and Dkt. 234. Defendants respectfully request that the Court find Claims 1, 17, and their dependents invalid under 35 U.S.C. § 112, ¶ 2, find H-W's Complaint fails to state a claim for direct infringement of method Claim 9, and dismiss H-W's Complaint pursuant to Rule 12(b)(6).

Dated: September 7, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

On September 7, 2012, I electronically submitted the foregoing document with the clerk of the court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal rule of Civil Procedure 5(b)(2).

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